

**OFFICIAL FILING
BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Highland Wind Farm, LLC for a
Certificate of Public Convenience and Necessity
To Construct a 102.5 MW Electric Generation
Facility and Associated Electric Facilities, to be
Located in the Towns of Forest and Cylon,
St. Croix County, Wisconsin

Docket No. 2535-CE-100

**HIGHLAND WIND FARM, LLC'S REPLY BRIEF IN SUPPORT OF ITS
REQUEST FOR A TWO-YEAR EXTENSION**

On September 10, 2014, Highland Wind Farm, LLC ("Highland") requested a two-year extension of the construction commencement deadline set forth in Order Point #29 of the Commission's Final Decision on Reopening ("Final Decision") in this matter. PSC REF #: 215747. Both Forest Voice and the Town of Forest ("Town") object to the extension request. PSC REF #s: 215931 and 218087. Neither objection is justified given Highland's very reasonable request. The procedural history in this docket and subsequent judicial review proceedings manifests the reasonableness of Highland's requested extension. CPCN extension requests are routine, as are their approvals (usually as a delegated decision). What is not routine are objections to a CPCN extension request from opponents who were parties to the proceedings below.

Forest Voice objects that a two-year extension represents an "arbitrary period" that should not be granted unless Highland can "show what that extension period should be," in light of "the reason why an extension is requested." Forest Voice Resp. (PSC REF #s: 215931). It is obvious to the world why an extension is necessary: there has not been a single ensuing month since the Commission issued its Final Decision in which the Town has not attempted to use legal

processes to nullify the Commission's decision to conditionally grant Highland a CPCN. Today, the Town is scheduled to file with the St. Croix County Circuit Court its reply brief in the pending judicial review action, and the Circuit Court has scheduled an October 21, 2014 oral argument on the matter. The Court's hearing will take place a mere four days before the authorized period to commence construction will expire, and the Court has not indicated whether it will render a decision immediately following the oral argument or take the matter under advisement.

In the pending judicial review action, the Town has specifically asked the Court to void the Commission's Final Decision in this docket and remand the matter to the Commission for a new hearing. Highland is lawfully entitled to construct the Highland Wind Farm project during the judicial review proceedings. However, nobody could seriously question the reasonableness of Highland's decision to delay construction while the Town is vigorously opposing the validity of Highland's CPCN. The Town is certainly cognizant of the fact that its appeal of the Final Decision hangs over the project like a damoclean sword, making financing of the Project an almost certain impossibility pending judicial finality.

Highland has requested a two-year extension of the construction commencement deadline in order to reasonably account for possible additional judicial review proceedings. Clearly, Highland is unable to forecast with certainty the amount of time necessary to reach judicial finality. To address Forest Voice's concern that a two-year extension appears arbitrary, Highland submits that the Commission could, in the alternative, extend the deadline for commencing construction to a point in time that is one year following the issuance of a final,

nonappealable judgment in the pending judicial review proceedings. The Commission has already issued other CPCN orders authorizing such an alternative.¹

Forest Voice also asserts, without any support grounded in law or the Commission's Final Decision on Reopening, that the extension will allow Highland to "construct a project that differs in significant and important ways from the project originally proposed." Forest Voice Resp. As the Commission is well aware, Highland is not free to construct either "the project originally proposed" or another project Highland may conceive of in the next two years. Rather, Highland is only permitted to construct the project the Commission authorized through its conditional grant of a CPCN. Nothing about Highland's request for an extension changes this reality.

The Town advances three different arguments in opposition to Highland's request. The Commission should reject all three. First, the Town alleges that Highland has failed to abide by Order Point #19 because Highland has not "approach[ed] the Town with a decommissioning cost estimator" during the pending judicial review proceeding. Town Resp., p. 1 (PSC REF #: 218087). The Town even asserts that Highland "had little reason to delay identifying decommissioning cost estimators" during this time. Town Resp., p. 2. The Town's arguments are both disingenuous and misleading. The Town, and its counsel, are fully aware that it and Highland agreed last December to toll the 60-day period required under Order Point # 19. *See* PSC REF #: 194876. Further, as noted above, the Town is actively seeking judicial nullification of Highland's CPCN. If the Town is successful, there will be no reason to discuss decommissioning cost estimators until the Commission holds the new hearing the Town seeks

¹*See, e.g., Joint Application of Dairyland Power Cooperative, Northern States Power Company-Wisconsin, and Wisconsin Public Power, Inc., for Authority to Construct and Place in Service 345 kV Electric Transmission Lines and Electric Substation Facilities for the CapX Twin Cities-Rochester-La Crosse Project, Located in Buffalo, Trempealeau, and La Crosse Counties, Wisconsin, Final Decision, Order Point # 23, pp. 52-53 (May 30, 2012) (PSC Ref. # 165332).*

and issues a subsequent order. In the meantime, Highland has not commenced construction and there is no urgency for Highland and the Town to agree on a decommissioning cost estimate. That was the very reason the parties agreed last December to toll the 60-day period reflected in Order Point #19.

Second, the Town asserts that the Commission must hold a new hearing “to consider factual and legal changes relevant to the docket.” Town Resp., p. 2. In so doing, the Town makes an implicit attack on the validity of the Commission’s Final Decision. Those issues are the subject of briefing before the Circuit Court and the Commission filed its position on those issues just three weeks ago. No aspect of Highland’s request for an extension justifies holding a hearing to relitigate the Town’s claim that wind turbines cause undue health impacts to local residents, or that Highland’s project will unreasonably interfere with land use and development as envisioned in a newly enacted comprehensive plan that did not exist prior to the issuance of the Final Decision.

Third, the Town claims that an extension of the construction commencement deadline would be prejudicial to the Town. With all due respect, there is no question that the delay in construction is directly attributable to the Town’s actions in seeking judicial reversal of Highland’s CPCN. Since Highland is an unwilling participant in those judicial review proceedings, it would be highly prejudicial *to Highland* for the Commission to deny its extension request and leave Highland with the Hobson’s choice of a) allowing the CPCN to expire or b) commence construction of a multi-million dollar project for which the necessary approval may be reversed at the culmination of pending litigation that Highland never initiated. It is ironic – if not insidious – that the Town would initiate judicial review proceedings and then claim that the construction delay wrought by that litigation is prejudicial to the Town’s interest.

As noted above, if the Commission is concerned that a two-year extension may be more than is necessary, the Commission could grant an extension that will expire one year following entry of a final, nonappealable judgment in the pending or subsequent judicial review proceedings. In practice, that would afford Highland the same one-year time frame they would have had in the absence of the Town's petition for judicial review.

For the reasons set forth above and in Highland's initial request, Highland asks that the Commission grant its request for an extension or, in the alternative, grant an extension that will expire one year following entry of a final, nonappealable judgment in the pending or subsequent judicial review proceedings.

Respectfully submitted this 17th day of September, 2014.

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